

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 1232

92ND GENERAL ASSEMBLY

Reported from the Committee on Governmental Accountability and Fiscal Oversight, March 4, 2004, with recommendation that the Senate Committee Substitute do pass.

3753S.03C

TERRY L. SPIELER, Secretary.

AN ACT

To amend chapter 34, RSMo, by adding thereto five new sections relating to the competitive government act.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 34, RSMo, is amended by adding thereto five new sections, to be known as sections 34.400, 34.403, 34.406, 34.408, and 34.410, to read as follows:

34.400. 1. The provisions of sections 34.400 to 34.410 shall be known and may be cited as the "Competitive Government Act".

2. As used in sections 34.400 to 34.410, the following terms shall mean:

(1) "Commercial activity", performing services which can be obtained from the private sector;

(2) "Core function of government", a function that is so closely related to the public interest as to necessitate performance by state government employees;

(3) "Cost comparison", the process of developing an estimate of the cost of government performance of a commercial activity and comparing it for contract performance of the activity;

(4) "Full-time employee", a state employee performing two thousand eighty hours of productive work per year;

(5) "Interested party":

(a) A private sector or nongovernment employee such as a not-for-profit organization source that:

a. Is an actual or prospective offeror for any contract, or other form of agreement, to perform the activity; and

b. Has direct economic interest in performing the activity that would be adversely affected by a determination not to procure the performance of the activity from a private sector source;

(b) A representative of any business or professional association that includes within its membership private sector sources;

(c) An officer or employee of an organization within an executive agency that is an actual or prospective offeror to perform the activity;

(d) The head of any labor organization.

34.403. 1. Not later than the end of each second fiscal year, the first beginning in 2005, the head of each executive agency shall submit to the commissioner of the office of administration a list of activities performed by state government sources for the executive agency that, in the judgment of the head of the executive agency, are not core functions of state government and are commercial activities. The office of administration, in coordination with the state competition council, shall establish the format for the commercial activities list.

2. The entry for an activity on the list shall include, but not be limited to, the following:

(1) The fiscal year for which the activity first appeared on a list prepared pursuant to this section;

(2) The number of full-time employees, or its equivalent, that is necessary for the performance of the activity by a state government source based on productive hours of work;

(3) The title and job description of the state government employee responsible for the activity from which additional information about the activity may be obtained.

3. The commissioner of the office of administration, in coordination with the state competition council, shall review the executive agency's list for a fiscal year and consult with the head of the executive agency regarding the content or omission of the final list for that fiscal year.

4. Upon the completion of the review and consultation regarding a list of an executive agency:

(1) The head of the executive agency shall promptly transmit a copy of the list to the senate and house of representatives appropriations committees and make the list available to the public; and

(2) The commissioner of the office of administration shall promptly publish a notice that the list is available to the public. The official list shall be published in an Excel spreadsheet format on the office of administration's Internet website.

5. If the list changes after the publication of the notice as a result of the resolution of a challenge pursuant to the provisions of section 34.410, the head of the executive agency shall promptly make each such change available to the public and transmit a copy of the change to the office of administration. The office of

administration shall publish a notice that the change is available to the public.

6. Until such time as a state competition council is established by executive order or statute, which council may be created under a different name as long as it is established to perform the duties described in sections 34.400 to 34.410, the office of administration shall perform the council's functions described in sections 34.400 to 34.410.

34.406. Within six months after the date on which a notice of the public availability of a list is published, the head of the executive agency concerned shall review the list for the purposes of identifying competition initiatives using the process prescribed by the state competition council and prepare a competitive sourcing plan for the agency. The agency head shall select one or more activities to undergo competition as appropriate. Each time that the head of the executive agency considers competing for the performance of such an activity, the head of the executive agency shall use a competitive process to select the source. The commissioner of the office of administration, in coordination with the state competition council, shall issue guidance for the administration of sections 34.400 to 34.410.

34.408. 1. For the purposes of determining whether to contract with a source in the private sector for the performance of an executive agency activity on the commercial activity list on the basis of a comparison of the costs of procuring services from such a source with the full costs of performing that activity by the executive agency, the head of the executive agency shall ensure that all costs, including the costs of quality assurance, technical monitoring of the performance of such function, liability insurance, employee retirement and disability benefits, and all other overhead costs are considered, and that the costs considered are realistic and fair.

2. Any executive agency subject to the competitive government act shall act in accordance with the provisions of section 8.285, RSMo.

34.410. 1. An interested party may submit to an executive agency a challenge of an omission of a particular activity from, or any inclusion of a particular activity on, a list for which a notice of public availability has been published.

2. A challenge to a list shall be submitted to the executive agency concerned within thirty days after the publication of the notice of the public availability of the list. Within thirty days after an executive agency receives a challenge, an official designated by the head of the executive agency shall:

- (1) Decide the challenge; and
- (2) Transmit to the party submitting the challenge a written notification of

the decision together with a discussion of the rationale for the decision and an explanation of the party's right to appeal under the provisions of this section.

3. An interested party may appeal an adverse decision of the official to the head of the executive agency within ten days after receiving a notification of the decision.

4. Within ten days after the head of an executive agency receives an appeal of a decision, the head of the executive agency shall decide the appeal and transmit to the party submitting the appeal a written notification of the decision together with a discussion of the rationale for the decision.

5. At the completion of competition, winning bidders, public or private, shall enter into a performance-based contract with the agency who will provide appropriate contract administration and performance reports to the public annually.

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